SUPREME COURT OF THE UNITED STATES

HIBERNIA NATIONAL BANK IN NEW ORLEANS *v.* CHUNG YONG IL ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 85–1281. Decided April 28, 1986

The petition for a writ of certiorari is denied.

JUSTICE WHITE, dissenting.

In this case, the United States Court of Appeals for the Eleventh Circuit held that the penalty wage provision of 46 U. S. C. § 596, which operates in favor of seamen whose wages are not timely paid, applies to wages earned aboard a docked vessel for which no voyage has been scheduled. 774 F. 2d 1043. This holding conflicts with the decisions in *Compton* v. *Alton Steamship Co.*, 608 F. 2d 96 (CA4 1979), and *Eaton* v. *Steamship Export Challenger*, 376 F. 2d 725 (CA4 1967).

The Eleventh Circuit also held that penalty wages continued to accrue against petitioner despite its filing with the District Court of a $400,000 letter of undertaking, in lieu of a bond, by which petitioner guaranteed payment of all maritime liens against its vessel. In so holding, the Eleventh Circuit rejected the view expressed in *Southern Cross Steamship Co.* v. *Firipis*, 285 F. 2d 651, 659–660 (CA4 1960), and *Swain* v. *Isthmian Lines, Inc.*, 360 F. 2d 81, 88, n. 26 (CA4 1966), that a shipowner may stop the accruing of penalty wages by placing in the hands of the court the allegedly unlawfully withheld wages.

Additionally, the Eleventh Circuit held that penalty wages continued to accrue against petitioner up to the actual payment of the disputed wages shortly prior to oral argument on appeal. This ruling is difficult if not impossible to square with *Pacific Mail S. S. Co.* v. *Schmid*, 241 U. S. 245 (1916), which we recently characterized with approval as "holding that when an appeal is taken on reasonable grounds, the pen-

alty should not apply to delays in payment beyond the date on which the district court's decree is entered, since those delays are supported by sufficient cause." *Griffin* v. *Oceanic Contractors, Inc.*, 458 U. S. 564, 574, n. 9 (1982).

I would grant certiorari to resolve the questions presented concerning the correct interpretation of the penalty wage statute.